

**MINUTES**  
**TEXAS BOARD OF PROFESSIONAL ENGINEERS**  
**REGULAR QUARTERLY BOARD MEETING**  
**1917 IH35 South**  
**Austin, TX 78741**  
**February 15, 2012 – 10:30 A.M.**

**Call to Order.** Daniel O. Wong, Ph.D., P.E., Vice Chair, called the Regular Quarterly Board meeting of the Texas Board of Professional Engineers (TBPE) to order at 10:30 a.m. on February 15, 2012, at the Texas Board of Professional Engineers, 1917 South Interstate 35, Austin, TX. (NOTE: All votes are unanimous, unless noted otherwise.)

**1. Roll Call and Welcome Visitors.**

Daniel Wong, Ph.D., P.E.	Vice Chair, Acting Chair
Edward L. Summers, Ph.D.	Treasurer
James Greer, P.E.	Member
Lamberto "Bobby" Balli, P.E.	Member
Govind Nadkarni, P.E.	Member
Gary Raba, D.Eng., P.E.	Member
Elvira Reyna	Public Member

A quorum was present. Mr. Kevin Heyburn, Assistant Attorney General, was present to provide legal counsel. Also present were Emeritus Board Members Mr. Edmundo Gonzalez, P.E., and Mr. Jose Guerra, P.E.

**The following staff members were present:**

Lance Kinney, P.E.	Executive Director
Priscilla Pipho, MPA	Deputy Executive Director
C.W. Clark, P.E.	Director of Compliance & Enforcement
David L. Howell, P.E.	Director of Licensing
Jeff Mutscher	Director of Finance
Dewey Helmcamp, III, JD	Staff Attorney
Clif Bond	Supervising Investigator
Dorothy Gonzales	Executive Assistant

**Visitors:** Peyton McKnight, American Council of Engineering Companies; Stephanie Stanford, Bury & Partners/Texas Society of Professional Engineers (TSPE); Terry Bilderbirk, P.E., TSPE; Al Kosik, P.E., TXDOT; Trish Smith, Executive Director, TSPE; Jennifer McEwan, TSPE; Kent O'Brien, P.E., TSPE.

**2. Public Comment.** None.

**3. Consent Agenda.**

(The following items may be acted upon under Consent Agenda and are marked with an asterisk\* on the Regular Quarterly Board Meeting Agenda)

- August 25, 2010, Enforcement Committee Minutes-modified
- November 16, 2011, Licensing Committee Minutes
- November 17, 2011, Policy Advisory Opinion Committee Minutes
- November 17, 2011, Enforcement Committee Minutes
- November 17, 2011, General Issues Committee Minutes
- November 17, 2011, Regular Quarterly Board Meeting Minutes
- Administrative Reports and Outstanding Administrative Penalties and Dismissed Cases
- Licensing Applications.

It was MOVED/SECONDED (Balli/Nadkarni) to approve the Consent Agenda with correction to August 25, 2010, Enforcement Committee Minutes; delete the second "directed". A vote was taken and the MOTION PASSED.

**Discuss and Possibly Approve Board Minutes:**

4. **\*(Consent Agenda)** Discuss and possibly approve minutes of the August 18, 2011, Regular Quarterly Board Meeting Minutes

**Discuss and Possibly Accept Committee Minutes:**

5. **\*(Consent Agenda)** August 25, 2010, Enforcement Committee Minutes-modified
6. **\*(Consent Agenda)** November 16, 2011, Licensing Committee Minutes
7. **\*(Consent Agenda)** November 17, 2011, Policy Advisory Opinion Committee Minutes
8. **\*(Consent Agenda)** November 17, 2011, Enforcement Committee Minutes
9. **\*(Consent Agenda)** November 17, 2011, General Issues Committee Minutes

Agenda items 4-9 approved on the Consent Agenda, see above.

**Discuss and Possibly Act on Reports:**

10. **Board Members' Activity Reports.**
11. **Emeritus Members' Activity Reports.**

Agenda items 10 & 11 are for information purposes only; no action taken.

**12. Budget.**

- **FY 12 1st Quarter Budget Report**

Mr. Mutscher reviewed the quarterly budget report submitted as an exhibit. He added that the firm renewal and firm registration revenue shows a negative variance; this has been a trend that has continued from the first quarter. The renewals for firms, sole proprietor firms, as well as new firm registrations seem to be experiencing a downward trend so far this year. Dr. Summers added that the decline in firm renewals is interesting and possibly significant; there is something going on and needs to be addressed. Mr. Ballí commented that it could be caused by the economy. Mr. Mutscher added that the Board members will see a proposed FY13 budget at the May 2012 meeting.

**13. Personnel Matters—this agenda item will be considered under executive session as authorized under Government Code §551.074.**

It was MOVED/SECONDED (Nadkarni/Ballí) to take agenda item #13 and move towards the end of the meeting. A vote was taken and the MOTION PASSED.

The Acting Chair called for agenda item #13 to be considered under executive session as authorized in Government Code §551.074 at 11:34 am. The meeting reconvened from executive session at 11:37 am.

The Acting Chair announced that no action was taken during executive session.

**Discuss and Possibly Act on Issues Regarding Committee Reports or Items on the Committee Agendas:**

**14. Enforcement Committee.**

- **Discuss and possibly act on the following rule proposal:**  
(Motion required)
  - **§139.35 (b) Sanctions and Penalties.** This rule is being proposed to be published in the Texas Register to correct a double negative statement.

It was MOVED/SECONDED (Raba/Nadkarni) to approve the Committees recommendation and post §139.35 (b) as submitted for publication in the Texas Register. A vote was taken and the MOTION PASSED.

- **Discuss, consider, and possibly act on decision resulting from SOAH case and Final Order for the following cases:**

- **E-32736; Charles Beckham, II.**

Dr. Raba reported that a final order for Mr Beckham was drafted for approval by the Board. Mr. Beckham was using P.E. in his business cards and email correspondence. An enforcement case was brought against him and he did not sign the consent order, so a SOAH case was scheduled, Mr. Beckham did not appear. The Administrative Law Judge (ALJ) handed the case back to the Board, and allowed the Board to send Mr. Beckham a final order that included a \$7,500.00 administrative fee. If Mr. Beckham does not comply and pay the fee his file will be turned over to the OAG for collection. In the interim, the Board has a notification that Mr. Beckham had contacted the ALJ claiming that he had not been properly served because he was out-of-state working. The ALJ has allowed for the case to be rescheduled. Dewey will work to re-set Mr. Beckham's SOAH case. No action required by the Board.

- **Staff Attorney Reports.**

- SOAH Cases
- Suits Against the Board
- Status of Court Cases (Injunctions)

This agenda item was not discussed at the Board meeting. It was included for informational purposes; however it was discussed at the Enforcement Committee meeting on February 15, 2012 (see minutes).

**15. General Issues Committee.**

**Discussion of agency budget/fee setting process.**

Dr. Wong reported that the Committee mentioned that there is a process that needs the Board's acknowledgment regarding budget/fee setting process. Dr. Wong asked Mr. Mutscher to share the process with the Board.

Mr. Mutscher reported that the process (included as an exhibit) was reviewed by the Executive Director and Dr. Summers. The process highlights some of the indicators that the agency will monitor which may signify a need for change in the budget or fees for the following year. It recognizes variances that would be brought to the Board's attention throughout the year. It helps identify a timeline and determine who performs what step of the budget and fee setting process. The state auditors requested that the Board have a written process to ensure that an analysis of factors supports any proposed budget or fee changes. Dr. Wong added that this process has always been followed, and now it is in writing. Dr. Wong commented that this is not a policy change but a process that the Board needs to acknowledge exists. Dr. Summers added that this process is at the staff's discretion and they may change it as they see fit. Mr. Mutscher added that any changes to the process will be brought to the Board.

It was MOVED/SECONDED (Ballí/Summers) to acknowledge the budget/fee setting process as prepared by staff. A vote was taken and the MOTION PASSED.

**16. Policy Advisory Opinion Committee.**

- **EAOR #31-Designated Engineering Representative (DER)—Consideration of whether a DER is required to be licensed in Texas.**

This EAOR is regarding if a DER appointed by the FFA are exempt from licensure by the Board. Staff researched this issue and provided information to the PAOC. Staff asked for guidance from the Committee regarding a request for an Attorney General opinion.

It was MOVED/SECONDED (Balli/Nadkarni) to accept the Committee's recommendation to direct staff to draft an Attorney General Opinion request, and to wait for a response from the OAG's office regarding the opinion before making a final decision regarding EAOR#31. A vote was taken and the MOTION PASSED.

- **EAOR #32 – Request regarding Texas Engineering Practice Act Board Rules (Act & Rules) and Staff Procedures.**

Mr. Ballí reported that EAOR #32 is a request which involves a client and a Professional Engineer, and asked Mr. Clark to share the information gathered by staff. Mr. Clark reported that this was a two (2) part question: one asks for a response from the PAOC, and the second one is a licensing question. Mr. Clark added that Ms. Carol Hemphill's opinion request was whether a member of the TBPE staff can deviate from the Board rules without formal Board approval. Mr. Clark added that answers to the questions are addressed in the statute and Board rules, and that staff prepared a letter (an exhibit) responding to Mrs. Hemphill's opinion request. Dr. Wong asked Mr. Howell to address the question regarding the licensees. Mr. Howell responded that the results showed that all 609 on the list were licensed appropriately in accordance with state statutes and Board rules in place at the time. Mr. Balli commented that staff has gone to a great amount of effort to respond to Ms. Hemphill. It was clarified that the Licensing response does not need Board approval because Ms. Hemphill asked that the Licensing Committee review the list, which they did. Ms. Hemphill was invited to the meeting, and she responded that she could not attend due to personal reasons. Mr. Kinney said that he will notify Ms. Hemphill regarding the results/information discussed at the Board meeting.

It was MOVED/SECONDED (Ballí/Nadkarni) to accept the Committee's recommendation and forward the response letter to Ms. Hemphill. A vote was taken and the MOTION PASSED.

#### 17. Licensing Committee.

- **Personal Appearances from Licensing Applicants**

Mr. Nadkarni mentioned that there were 12 personal appearances heard at the Licensing Committee meeting. He added that these appearances were due to criminal incidents on the applicants' records. The Committee recommended approval of 10 of the 12 applicants; 4 were licensed in other states and requesting to be licensed in Texas, which the Committee recommends approval to be licensed in Texas; 6 were requesting to take the Professional Practice Exam, which the Committee recommends; 2 were asked to return to the next scheduled Licensing Committee meeting.

It was MOVED/SECONDED (Nadkarni/Raba) for the Board to accept the Licensing Committee's recommendations as presented. A vote was taken and the MOTION PASSED.

Mr. Howell reported on Software Engineering, stating that staff is still working with IEEE, NCEES and the Software Engineering Licensure Consortium (SELC) towards developing a guide for licensing software engineers. He also described a licensing report that was put together in response to a public request at the November 2011 committee meeting. The full report and summary is included as an exhibit. He added that the licensing department has had great success with the new online applications. Since implementation, they have received approximately 75% of all new PE applications online. He commended Licensing Staff for a great job in handling these as well as with the transition. Mr. Balli asked when the EIT application will be available online. Mr. Howell responded that it is a simple process and will be considered after the windstorm application process is complete. Mr. Howell reported that work has been done with the IT department to develop and launch the windstorm application online.

#### **Discuss and Possibly Act on Reports or Items reported by the Executive Director:**

#### 18. Executive Director's Report.

- **Activity Report.** Mr. Kinney reported that his report is included as an exhibit.
- **State Auditor Office Audit.** Mr. Kinney reported that the audit has been ongoing for the last three (3) months. He thanked Jeff and staff for their assistance during this process. He added that Dr. Summers is the Board liaison. He believes this should be a positive report. He asked Dr. Summers for additional comment. Dr. Summers explained the process of receiving the report and having input before the final report is presented to the Board. He added that the auditors are impressed with the

quality of financial reporting, management, and leadership. The auditors were extremely complimentary of Mr. Mutscher both in the meetings and privately to him.

- **Engineers & Architects update.** Mr. Kinney reported that December 31, 2011 was the deadline for engineers to apply to be given an exemption to practice architecture. The Architects Board has had two meetings to review the 78 applications they received. Staff is working with TBAE to coordinate the Task Force, and a meeting will be held in the near future. Interaction between the agencies is more open and is moving forward.
- **Windstorm Inspection Update.** Mr. Kinney reported that TBPE and TDI made two presentations together: one in Corpus Christi to 116 attendees and the second one in the Galveston area to 155+ attendees with standing room only. A third presentation is scheduled in Brownsville on February 28, 2011. Mr. Kinney thanked TDI for their efforts and assistance with these presentations.
- **NCEES Meetings and updates.** Mr. Kinney reported that the NCEES SZ Interim meeting is coming up in April in Huntsville, AL. He asked that anyone interested in attending to please let him know. He added if anyone was interested in attending either the FE or PE exams as observers, please let him know so they can be added to the list.
- **Sunset Review Update.** Mrs. Pipho reported that the agency is still on schedule for the June Sunset visit. Staff continues to update and document processes already in place.
- **Texas Quality Foundation Award Update.** Mr. Kinney reported that the agency is continuing with the new quality initiative and has submitted an application for the Texas Award for Performance Excellence Commitment Level. **Newsletter/Communication.** Mr. Kinney reported that the new TBPE logo and branding initiative has been unveiled. Board Members received a copy of the Newsletter, coffee cup, pencil, and pocket protector with the new logo.
- **Outreach Activities.** Mr. Kinney reported that staff is still working hard and traveling all over the state making presentations and getting the word out. Mr. Kinney thanked staff for all their efforts. The outreach presentation is being revamped at this time.

Mr. Kinney concluded by commenting that the agency is beginning the strategic planning process; Ms. Pipho is the staff member in charge of this project. He added that Dr. Raba is the Board liaison on this project.

#### **Discuss and Possibly Act on Enforcement/Disciplinary Matters:**

19. **\*(Consent Agenda) Administrative Reports, Outstanding Administrative Penalties Dismissed Cases, Cease and Desist Order, Agreements, Injunctions/Default Judgments.**

This agenda item was approved under the Consent Agenda, see agenda item #3.

#### **20. Agreed Board Orders.**

1. Arch Foundation Repair – B-32981 (Baker)
2. Arturo S. Gaytan, P.E. – D-32395 (Ballí)
3. Pradip Talukdar, P.E. – D-32354 (Greer)

Mr. Clark reported that the Agreed Board Orders are the result of informal conferences, attended by the Board members listed beside each individual. The Agreed Board Orders have been signed by the individuals. Mr. Clark stated that the Compliance & Enforcement team we prepared to discuss any of the orders if the Board so desired.

It was MOVED/SECONDED (Raba/Nadkarni) to approve the Agreed Board Orders as submitted. A vote was taken and the MOTION PASSED. Mr. Ballí recused himself from voting on Mr. Gaytan's Agreed Board Order; Mr. Greer recused himself from voting on Mr. Talukdar's Agreed Board Order; Mrs. Baker did not attend the Board meeting.

#### **21. Consent Orders.**

Informal Reprimands (In accordance with Board Rule 139.31(b) individual names are not listed)

4. D-32446

Practice Violations

5. Charles Kniffin, P.E. – D-33066

Sanctions Against Non-License Holders

6. Carl W. McGloughlin – B-33104

Firm Registrations/Sole Proprietorship Sanctions

7. Triple C Project Services, Ltd. – B-33075

Mr. Clark reported that the Consent Orders have been signed by each individual. Orders are included as exhibits for the Board's review.

It was MOVED/SECONDED (Raba/Ballí) to approve the Consent Orders as submitted. A vote was taken and the MOTION PASSED.

**Discuss and Possibly Act on Licensing Applications Requiring Board Ruling:**

22. **\*(Consent Agenda) Licensing Applications**

Vote or Reconfirm Votes Pursuant to Board Rule §133.87:

Approved for Licensure

Not Approved for Licensure

Waivers – Both

Waivers – FE

Waivers—PE

Approved for Exams

Exams not Approved

Firms Approved

This agenda item was approved under Consent Agenda, see agenda item #3.

**Discuss and Possibly Act on Other Matters**

23. **Issues from Board members for future meetings.**

Report on security, policies and procedures in place at the Board regarding cyberspace safety. A report on security measures regarding the physical well-being of Board members and staff at Board/Committee meetings that could be taken. EIT application timeline process.

24. **Future TBPE meeting dates.**

Next TBPE Board/Committee meetings are scheduled for May 2012.

Dr. Wong, Acting Board Chair, returned to agenda item #13, see above.

**Adjourn.**

It was MOVED/SECONDED (Nadkarni/Summers) to adjourn the meeting at 11:38 am. A vote was taken, and the MOTION PASSED.

Date Board approved the minutes as submitted:

May 24, 2012